

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
ALEXANDRIA DIVISION**

CHARLOTTE CHARLES, *et al.*,

Plaintiffs,

v.

ANNE SACOOLAS and JONATHAN
SACOOLAS,

Defendants.

Civil Action No. 20-1052-TSE

**UNITED STATES' MOTION FOR LEAVE TO FILE MOTION FOR PROTECTIVE
ORDER AND SUPPORTING EX PARTE, IN CAMERA SUBMISSION**

Pursuant to 28 U.S.C. § 517, the United States, through undersigned counsel, hereby respectfully moves for leave to file two sets of papers with the Court: (1) a Statement of Interest and motion for protective order on the public docket, attached hereto as Exhibits A and B, and (2) a classified supplemental submission, submitted *ex parte* and *in camera*, in support of the motion for protective order. The grounds for this motion are set forth below. Undersigned counsel has conferred with counsel for the parties regarding the relief sought in this motion; Defendants consent and Plaintiffs oppose.

1. 28 U.S.C. § 517 provides that an officer of the Department of Justice “may be sent by the Attorney General to any State or district in the United States to attend to the interests of the United States in a suit pending in a court of the United States . . . or to attend to any other interest of the United States.” In light of this statutory authority, the United States may seek relief, including entry of a protective order, as a third party through a Statement of Interest. *See Hall v. Clinton*, 285 F.3d 74, 80 (D.C. Cir. 2002) (section 517 “plainly confers upon the Attorney General broad discretion in his decision to dispatch government lawyers to attend to *any* . . . interest of the

United States” (citation omitted)). And the United States’ interests implicated by the underlying motion for protective order are amply supported. Specifically, although the United States takes no position on the ultimate disposition of this private lawsuit, it has a substantial interest in certain limited information at risk of disclosure in further proceedings in this litigation because of the effect disclosure of such information may reasonably be anticipated to have on the national security of the United States. To ensure the protection of that interest, the United States may seek relief before this Court pursuant to section 517 and, accordingly, the Court should grant leave to file Exhibits A and B to this motion on the docket.¹

2. It is also permissible for the United States to support its motion for protective order with an *ex parte, in camera* submission. The Government’s contemplated *ex parte* filing contains classified national security information. Separation of powers principles, statutory authority, and the public interest all heavily favor the nondisclosure of such national security information. *See, e.g., Dep’t of Navy v. Egan*, 484 U.S. 518, 527–30 (1988) (recognizing the Government’s “compelling interest in withholding national security information from unauthorized persons” and stating that the “authority to protect such information falls on the President as head of the Executive Branch and as Commander in Chief”). Unauthorized disclosure of such information is contrary to the public interest where, by definition, such disclosure would damage the national security of the United States. *See* Exec. Order 13,526 § 1.2(a), 75 Fed. Reg. 707, 707–08 (Jan. 5, 2010).

Given that background, numerous courts have accepted classified materials for *ex parte, in camera* review. *See, e.g., Jifry v. FAA*, 370 F.3d 1174, 1182 (D.C. Cir. 2004) (“[T]he court has

¹ The filing of a Statement of Interest does not constitute formal intervention as a party to a civil action. For the reasons discussed above, the United States may seek relief, including entry of a protective order, as a third party through a Statement of Interest. However, if the Court determines that formal intervention under Fed. R. Civ. P. 24 is necessary, the United States would move to intervene as of right to protect its interests.

inherent authority to review classified material *ex parte*, *in camera* as part of its judicial review function.”); *Tabbaa v. Chertoff*, 509 F.3d 89, 93 n.1 (2d Cir. 2007) (reviewing *ex parte* and *in camera* classified information pertaining to the reasons for border inspection); *Bassiouni v. FBI*, 436 F.3d 712, 722 n.7 (7th Cir. 2006) (conducting *ex parte*, *in camera* review of classified FBI declaration); *Holy Land Found. for Relief & Dev. v. Ashcroft*, 333 F.3d 156, 164 (D.C. Cir. 2003) (holding that the Due Process Clause does not prohibit designation for sanctions on the basis of classified information submitted only for *ex parte* and *in camera* review) (citing *People’s Mojahedin Organization of Iran v. Dep’t of State*, 327 F.3d 1238, 1242 (D.C. Cir. 2003)); *Global Relief Found., Inc. v. O’Neill*, 315 F.3d 748, 754 (7th Cir. 2002) (same).

Should the Court accept filing of the Government’s classified submission *ex parte*, *in camera*, the Government anticipates lodging it with the Department of Justice’s Classified Information Security Officer, who will make it available to the Court for review at its convenience.

3. For the foregoing reasons, this Court should grant the United States leave to file a Statement of Interest and accompanying motion for a protective order, and to lodge a supplemental submission with the Classified Information Security Officer for *ex parte*, *in camera* review.

4. A proposed order has been attached for the convenience of this Court.

Dated: July 23, 2021

Respectfully submitted,

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